

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BILLY RION,

Plaintiff,

v.

No. CV 11-0269 JB/CG

BERNALILLO COUNTY SHERIFFS

A. MEDRANO, et al.,

Defendants.

ORDER FOR INITIAL MARTINEZ REPORT

THIS MATTER comes before the Court, *sua sponte*, for an Order directing Defendants to provide an initial *Martinez* report for the purposes of identifying the two unnamed defendants in Plaintiff's complaint. The report will enable the Court to assist Plaintiff in effecting service of the summons and complaint upon the unnamed Defendants.

Plaintiff claims that several members of the Bernalillo County Sheriff's Department used excessive force when they arrested him on October 18, 2010. (Doc. 1 at 2). Upon being booked at the Metropolitan Detention Center that same day, two unnamed female nurses purportedly refused to provide him with necessary medical treatment. (Doc. 1 at 5-6; Doc. 6 at 2). He states that he only received medical treatment several months later and that this delay exacerbated his injuries. (Doc. 6 at 3). As a result of the delay, he continues to suffer from numbness in his hands and feet and he experiences severe pain in his neck, back, legs, hands, and feet. (Doc. 1 at 2; Doc. 6 at 3).

Upon a review of Plaintiff's complaint and his memorandum in support of the complaint, the Honorable United States District Judge James O. Browning directed Plaintiff

to name the unidentified nurses so as to effect service. (Doc. 14 at 4). Plaintiff was advised that failure to identify the two nurses might result in the dismissal of his claims against them. (*Id.*). In response, Plaintiff filed a motion seeking court-appointed counsel in which he claimed that he could not identify the unnamed nurses “because I am in the penitentiary . . .” (Doc. 16 at 1). He further claimed that he has lost all contact with non-incarcerated persons. (*Id.*). The Court denied Plaintiff’s motion for court appointed counsel. (Doc. 16). However, with regard to his contention that he was unable to identify the nurses, the Court stated that it would consider “ordering the named Defendants to identify all medical personnel involved in processing Mr. Rion’s arrival at the Metropolitan Detention Center on October 18, 2010.” (*Id.* at 2-3). The Defendants have now filed an answer to the complaint and a limited *Martinez* report is appropriate to identify the unnamed nurses listed in Plaintiff’s complaint.

The purpose of a *Martinez* report is to “develop a record sufficient to ascertain whether there are any factual or legal bases for the prisoner’s claims.” *Hall v. Bellmon*, 935 F.2d 1106, 1009 (10th Cir. 1991) (citing *Martinez v. Aaron*, 570 F.2d 317, 318-19 (10th Cir. 1978)). The Court may order a defendant to investigate the incident or incidents underlying a lawsuit and to submit a report in order to develop a factual or legal basis for determining whether Plaintiff has a meritorious claim. See, e.g., *Gee v. Estes*, 829 F.2d 1005, 1007 (10th Cir. 1987).

Wherefore, to assist the Court and Plaintiff in identifying the two unnamed defendants,

IT IS HEREBY ORDERED THAT:

1. Defendant shall prepare a *Martinez* report addressing the medical care

claims raised in the complaint, (Doc. 1), and memorandum in support, (Doc. 6), by:

- a. Naming all female medical personnel assigned to treat and process inmates at the Metropolitan Detention Center on October 18, 2010. Such information shall include, but is not limited to, the names of any persons who dealt directly with Plaintiff with regard to the medical treatment that is the subject of his complaint, or who witnessed or made decisions with regard to such treatment; whether any records or documents exist pertaining to such treatment and, if so, a description of those records and documents and their contents; and
 - b. Providing copies of all records and documents pertaining to the medical treatment or matters referred to in the foregoing subparagraph a.
2. All records and documents submitted with the report must be submitted with an index. The index must identify each record and document submitted by number, and each record and document must be marked with a tab or label showing its number. Additionally, the report and each record and document submitted with the report must have its pages numbered using Bates stamps, or a similar numbering system.
3. Defendants shall submit the report no later than December 13, 2011.
4. Plaintiff shall file a response indicating the identities of the unnamed nurses who purportedly refused to provide medical treatment no later than December 27, 2011.

IT IS FURTHER ORDERED that, upon completion of the *Martinez* report and Plaintiff's identification of the unnamed Defendants, the Court will direct the Clerk of the Court to issue notice and waiver of service forms, with copies of the complaint and memorandum in support, to the Defendants.



THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE